STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM J. ZACK,

Plaintiff-Appellee,

v

MICHAEL J. ZACK,

Defendant-Appellant.

UNPUBLISHED
January 11, 2002

No. 225826
Macomb Circuit Court
LC No. 99-001197-CH

Before: Saad, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's February 23, 2000, order rendering judgment by default against defendant and ordering the partition and sale of real property. We affirm.

On appeal, defendant initially argues that the trial court abused its discretion in placing defendant in default for discovery violations. We review a trial court's imposition of discovery sanctions, including default, for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999); *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 87; 592 NW2d 112 (1999). In *Bass*, *supra* at 26, this Court held that "[s]evere sanctions are generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary." In exercising its discretion whether to impose discovery sanctions and to determine what sanction is appropriate, a trial court should consider the following factors:

> "(1) [W]hether the violation was wilful or accidental; (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses); (3) the prejudice to the [other party]; (4) actual notice to the [other party] of the witness and the length of time prior to trial that the [other party] received such actual notice; (5) whether there exists a history of [the party's] engaging in deliberate delay; (6) the degree of compliance by the [party] with other provisions of the court's order; (7) an attempt by the [party] to timely cure the defect; and (8) whether a lesser sanction would better serve the interests of justice." [*Id*. at 26-27, quoting *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).]

On appeal, defendant primarily asserts that he was not provided notice of the discovery defects he was expected to remedy. However, a review of the record belies defendant's claim.

After defendant initially failed to comply with plaintiff's discovery requests, the trial court, in an order entered October 14, 1999, allowed defendant seven days "within which to answer or amend its answers to the discovery requests in question." Moreover, the trial court warned defendant that further failure to comply with discovery requests would result in sanctions. After defendant failed to comply with the terms of the October 14, 1999, order, the trial court ordered sanctions against defendant in the amount of $1,000 and ordered defendant to respond to plaintiff's discovery requests by November 11, 1999.

Although defendant timely responded to plaintiff's discovery requests by November 11, 1999, the trial court found, in an order entered January 24, 2000, that defendant's responses were wholly inadequate and vague to the extent that they amounted to a failure to answer. The trial court's findings in this regard are instructive.

> The Court is mindful that defendant timely submitted his discovery responses to plaintiff, as required by the November 1, 1999 order. Clearly, however, defendant was required to submit responses that were both timely and adequate. Throughout this litigation, defendant's failure to sufficiently respond to plaintiff's discovery requests has been at issue. In the Court's October 13, 1999, decision, defendant was ordered to adequately respond to such requests. Moreover, discovery sanctions were imposed against defendant pursuant to the Court's November 1, 1999, order. To allow defendant to circumvent the consequences of the November 1, 1999 order by timely filing inadequate responses would be contrary to the spirit of such order. Defendant received sufficient warning that the Court would not tolerate further abuses of the discovery process. He has disobeyed the Court's order to his own detriment. [Underline in original.]

Given defendant's history of submitting evasive and incomplete discovery responses in this case, we are satisfied that the trial court did not abuse its discretion in rendering judgment by default against defendant pursuant to MCR 2.313(B)(2)(c).[1]

Defendant next argues that the trial court erred in partitioning the real property, given that the terms of the December 11, 1989, co-partnership agreement prohibited partition. In his brief on appeal, defendant has failed to cite any authority in support of his claim. Therefore, he has waived this issue on appeal. *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000).

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[1] Likewise, we reject defendant's claim that the trial court erred in concluding that his motion for summary disposition was rendered moot following its entry of judgment by default in favor of plaintiff. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) ("A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights"). When the default judgment was entered against defendant, his liability in this action was conclusively established. *Rogers v J B Hunt Transport, Inc*, 244 Mich App 600, 605; 624 NW2d 532 (2001). Thus, we are not persuaded that the trial court erred in concluding that the issues raised in defendant's motion for summary disposition were moot.

> "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel or elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." [*Wysocki v Kivi*, ___ Mich App ___; ___ NW2d ___ (Docket No. 221989, issued 11/20/01) slip op, 9, quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Finally, defendant asserts that the court-ordered sale of the real property should be set aside because the property was sold in contravention of MCR 3.403(B)(2). We disagree.

When interpreting court rules, we apply the same standards that govern statutory interpretation. *Sumner v General Motors Corp (On Remand)*, 245 Mich App 653, 660-661; 633 NW2d 1 (2001). Our primary goal is to determine and effectuate the intent behind the rule. *Id.* Where the plain meaning of the text is unambiguous, no judicial construction is permitted. *Id.* In the instant case, MCR 3.403(B)(2) provides that "[n]either the person conducting the sale nor anyone acting in his or her behalf may directly or indirectly purchase or be interested in the purchase of the premises sold."

The trial court's February 23, 2000, order directing the sale of the real property specified that plaintiff "is solely authorized to list, advertise and sell the Real Estate without any interference from Defendant, for the highest gross sales price possible of not less than $90,000 in bank draft or certified funds, and the court shall approve the sale." A review of the plain language of MCR 3.403(B)(2) reveals that it is aimed at prohibiting a party interested in purchasing the property from conducting its sale in order to ensure that the sale constitutes an arm's-length transaction. In the instant case, there is no indication in the record that the subsequent purchase of this property was anything but arm's length. Indeed, it is clear that the trial court took great pains to ensure that the sale of this property was fair to both parties. Specifically, the trial court directed that it must approve the final sale of the real property. See MCR 3.403(B)(4), (5). The trial court also ordered plaintiff to provide notice of the sale as provided in MCR 3.403(B)(1). Further, a review of the record reveals that the property was sold to a third party for $105,000 and that the net proceeds were distributed equally between defendant and plaintiff.[2] Under the circumstances, we are not persuaded that the sale of the property should be set aside.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Peter D. O'Connell

[2] However, the trial court's order entered August 25, 2000, indicated that $4000 would be taken from defendant's portion of the net proceeds to compensate plaintiff for attorney fees and costs.